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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,932	07/15/2003	Rebecca L. Engel	P0011481.00	6826
77218	7590	10/15/2010		
Medtronic CardioVascular Mounds View Facility South 8200 Coral Sea Street N.E. Mounds View, MN 55112			EXAMINER MEDWAY, SCOTT J	
			ART UNIT	PAPER NUMBER
			3763	
			NOTIFICATION DATE	DELIVERY MODE
			10/15/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.vasciplegal@medtronic.com

### Office Action Summary

**Application No.**

10/619,932

**Applicant(s)**

ENGEL ET AL.

**Examiner**

SCOTT MEDWAY

**Art Unit**

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 July 2010.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3, 7, 8, 10 and 13 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1, 3, 7, 8, 10 and 13 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 15 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office Action is based on the 10/619932 application filed 07/15/2003.

Examiner acknowledges the reply filed 07/27/2010.

Claims 1, 3, 7, 8, 10 and 13 are currently pending and are considered below.

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. **Claims 1, 3, 7, 8, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ash et al (U.S. Pat. 5,947,953, hereinafter “Ash”) in view of de la Rama et al (U.S. Pat. 6,246,914 B1, hereinafter “de la Rama”).**

Regarding claims 1, 3, 6 and 10, Ash discloses a venous cannula comprising a body portion (48) wherein at least the body portion is valveless, wherein the body has a wall and a lumen and is sized for placement in a portion of a venous system, further comprising a plurality of valveless apertures (74) interconnected with the lumen and permitting fluid flow from outside the lumen into the lumen. It is noted that Ash does not disclose the claimed aperture shape. de la Rama discloses a catheter comprising a plurality of apertures (12) taking on an eye shape (see Fig. 3) in which the apertures have first and second corners (14A, 14B) defined by arcuate portions that intersect with each other, wherein each of the apertures has a longer major axis perpendicular with the longitudinal axis of the lumen, and a shorter minor axis. The apertures are arranged into a plurality of rows extending along the longitudinal axis of the lumen and the

corners do not buckle outwardly as the cannula is flexed (see Fig. 3). Since Ash does not appear to provide criticality for a particular aperture shape, and since de la Rama teaches apertures shaped in an eye-like fashion to ensure that fluid may still flow through the apertures even when the catheter on which the apertures are formed buckles, it would have been obvious for one of ordinary skill in the art at the time of the invention to seek the aperture shape of de la Rama for use in the cannula of Ash because that combination would yield the claimed invention with a reasonable expectation of success.

Regarding claims 7 and 13, Ash discloses that the apertures are arranged in a plurality of adjacent and offset rows such that the apertures in the adjacent rows are a different distance from the distal tip of the body (see Fig. 3 wherein the apertures are shown to be arranged in offset rows) wherein doing so is suitable to allow fluid to flow into some apertures even if other apertures become blocked.

### ***Response to Arguments***

3. Applicant's arguments filed 07/27/2007 have been fully considered but they are not persuasive. Responding to Applicant's argument that one of ordinary skill in the art at the time of the invention would not modify the apertures of Ash to take on the shape and placement of de la Rama, Examiner asserts: the placement of the apertures of de la Rama was not used as motivation to combine the inventions of Ash and de la Rama. Indeed, Examiner did not note the placement of the apertures, but rather, relied on the teaching of eye-shaped apertures in de la Rama for the combination. It is Examiner's

assertion that no portion of Ash teaches away from different shaped apertures, such as eye-shaped apertures, while de la Rama shows that eye-shaped apertures would allow a cannula device to communicate with an exterior environment even when buckled.

Responding to Applicant's argument that combining the references of Ash and de la Rama is improper because one would not seek to provide fluid flow through the cannula of Ash, Examiner asserts that providing fluid flow through the cannula of Ash is not required to properly combine the references of Ash and de la Rama. Examiner has merely relied on the teaching of eye-shaped apertures within a tube, regardless of what flows through that tube. While Ash does not disclose that fluid flows through the cannula, and contemplates an embodiment in which the cannula is sealed off from fluid, it is recognized that providing fluid flow through the same cannula in which an electrical lead is provided would not necessarily destroy or damage the lead, especially in the case of medical leads which are specifically designed to be impervious to fluid. Additionally, the embodiment in which the cannula is sealed off from fluid is merely one disclosed embodiment and is not intended to encompass every disclosed embodiment of de la Rama. Therefore, no portion of de la Rama specifically teaches away from fluid flow through the cannula, contrary to Applicant's argument.

Responding to Applicant's argument that the apertures of de la Rama are not eye-shaped, Examiner asserts that the apertures of de la Rama have a nearly identical shape to the apertures identified by Applicant as being "eye-shaped", and further, the apertures of de la Rama take on the same description of the aperture shape as claimed

by Applicant (i.e., including first and second corners defined by arcuate portions that intersect with each other).

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT MEDWAY whose telephone number is (571) 270-3656. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott J. Medway/  
Examiner, AU 3763  
10/10/2010

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763